IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 471 OF 2006

IN

CHAMBER SUMMONS NO. 459 OF 2006

IN

EXECUTION APPLICATION NO. 248 OF 2003

IN

SUMMARY SUIT NO. 4322 OF 1998

Barter Leasing & Finance Ltd., .. Plaintiff.
vs.
Shri Umesh B. Duggal .. Defendant.
And
Shri Praful Fulchand Shah . Applicant.

Mr. M.A. Shahi i/by Ranjana Parikh
for plaintiff.
Mr. A.R. Bapat for purchaser.
Mr. Vinod Shah for Applicant.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 12th June, 2006.

P.C.

. This Chamber Summons is to set aside the order dated 12.12.2005 confirmed on 20.2.2006 pertaining to sale of immovable property in execution.

2. The case of the applicant who has taken out this chamber summons is that he has instituted a suit being Special Civil Suit No. 296 of 1999 in

the Court of Civil Judge, Senior Division against the defendant no. 1. The said suit is pending.

3. This immovable property had been put up for sale in execution of the decree passed in Summary Suit No. 4322 of 1998 instituted by the present plaintiff/decree holder. The auction sale was cancelled once. At the second auction, the applicant desired that his bid should be considered but the Commissioner prevented him from participating in the sale. According to him, the immovable property/flat is undervalued. His claim in the suit filed by him is Rs. 12,75,000/- The property is sold for Rs. 14,30,000/-. Therefore,l this application under Order 21 Rule 90 (1) read with the relevant provisions of the Bombay High (Original Side) Rules be allowed and the sale be set aside.

4. The reply affidavit which is filed by the decree holder points out that the decree was passed as early as on 5.6.2002. The warrant of attachment was levied on 11.7.2003. Warrant for sale was issued on 9.10.2003. The notice was issued by the Commissioner to all interested parties to lodge their claim affidavit before him by 15.12.2003. This notice was affixed on the notice board of this Court in addition to publication in Free Press Journal and Janmabhoomi. The proclamation of sale

was thereafter settled. But a chamber summons was moved being Chamber Summons No. 1697 of 2003. Consequent to the order passed thereon, the property was once again put up for sale. The details pertaining to the same are set out in affidavit in reply filed by the plaintiff/decree holder.

5. Additionally, it is pointed out that the suit instituted by the present applicant is still pending. Pursuant to a consent order passed on 1.3.2005 in the execution proceedings, as far as the sale proceeds are concerned, they were not to be disbursed until the objections of the applicant as well as the decree holder are considered and the Commissioner passes an appropriate order in accordance with law. Now, the proceedings before the Commissioner are concluded. He is about to pass final orders. All submissions are placed before him with supporting documents. At this belated stage such an application should not be granted.

6. In the light of the affidavit in reply and the admitted facts, in my view, the exercise of considering as to whether the sale was vitiated or is bad because of any material irregularity need not be gone into. In the present circumstances when the sale is complete and no prejudice is demonstrated, it would not be proper to set the clock back. More so, when both sides have been given liberty to place

their version with regard to disbursal of the sale proceeds in their favour. Further, assuming, that order 21 rule 90 (1) applies to the proceedings in execution before Chartered High Court, yet, proper reading of the same demonstrates that the Court is not obliged to set aside the sale unless the aggrieved party proves that he sustained substantial injury by such irregularity or fraud. There is no material much less any averments in this behalf. Consequently, Chamber Summons No. 471 of 2006 as well as Chamber Summons No. 459 of 2006 are dismissed. The Commissioner to proceed and pass final orders.

7. Needless to state that this order does not prevent the applicant from challenging the order passed by the Commissioner on disbursal of the sale proceeds and all contentions in that behalf are expressly kept open to be agitated in appropriate proceedings. Since the Chamber Summons are rejected, needless to state that ad-interim orders passed therein stand vacated forthwith. The Commissioner can proceed and deliver as well as pronounce final orders.